plaint. On review, *held,* by a 5 to 4 decision, the judgment of the lower court should be reversed. *Calbrick* v. *Marysville Water & Power Co.,* (Wash., 1921), 195 Pac. 1027.

The courts have uniformly held that an instruction limiting the damages to the amount claimed in the complaint, is not for that reason erroneous as amounting to an intimation that the jury shall find for the full amount claimed. *Carpenter* v. *Walker,* 170 Ala. 659; *Chesapeake & O. Ry. Co.* v. *Carnahan,* 118 Va. 46; *Caughey* v. *Peoria Ry. Co.,* 164 Ill. App. 455. On the other hand, an instruction upon the subject of damages is erroneous which does not limit the jury to the evidence as the basis of fixing the compensation to be awarded. *Presley* v. *Kinlock-Bloomington Telephone Co.,* 158 Ill. App. 220; *Ill. So. Ry. Co.* v. *Hamill,* 226 Ill. 88; *Weigel* v. *McCloskey,* 113 Ark. 1; *St. Louis, I. M. & S. Ry. Co.* v. *Bright,* 109 Ark. 4. The instructions of the lower court in the principal case were framed upon the principles just stated, and included nothing which was affirmatively incorrect. The question resolves itself then to a consideration of whether the court should have instructed the jury specifically that the evidence could not permit of more than $597.90 damages. The dissenting judges in the principal case said that to require the courts at all times to keep in mind the details of all the testimony and to instruct the jury at its peril as to the maximum sum testified to by any witness would place unnecessary burdens upon the court. The objection, however, would apply equally well to directed verdicts and non-suits. It is a general principle of law that the jury must assess the damages in accordance with the testimony in the case, 13 CYC. 235-238, but the jury should have the guidance of the court in the form of instructions on the law of damages applicable to the facts shown, as will enable them to understand and act upon the evidence. 4 SEDGWICK ON DAMAGES 2661. The instructions should state the law as to the elements of damages in sufficient detail and not by too general a charge. *Southern Ry. Co.* v. *Cochran,* 149 Ala. 673. The question here would seem to be whether the statement made by the court as to the damages was so general as to be misleading in view of the evidence which specifically limited the recovery to a point below the claim in the complaint. Courts are not expected to give idle and irrelevant instructions, and a jury might very likely assume that the judge would not name $1,500 as the limit of the verdict unless he supposed that limit to be within the scope of their deliberations. The fact that they exceeded the amount shown in evidence but observed the limit specified by the judge, lends color to the view that the instruction was misleading.

TRUSTS—INCOME FOR SUPPORT—DISPOSAL OF UNEXPENDED ACCUMULATION OF INCOME.—Testatrix left property in trust for her son, directing trustees to use the income "or as much as may be necessary" for the support of her son during his life, the income from the estate to be used "solely" for the son's personal benefit and not for the support of his wife or son. In a bill for construction of the will, *held,* not a vested equitable life estate in the whole income, and that on death of the beneficiary the unexpended accumu-

lations should be distributed with the principal. *Thurber* v. *Thurber,* (R. I., 1921), 112 Atl. 209.

The distribution of the accumulated surplus necessarily depends upon whether the estate of the life beneficiary is vested. *Rhode Island Hospital Trust Co.* v. *Noyes,* 26 R. I. 323. As to vesting the case is clearly distinguishable from cases where there is an absolute gift of income for support until the principal fund is payable. *Hanson* v. *Graham,* 6 Ves. Jr. 239; *In re Hart's Trusts,* 3 De G. & J. 195; *Booth* v. *Booth,* 4 Ves. Jr. 399; and from cases where the whole income is expressly given, subject to discretion as to time and terms of payment. *Endicott* v. *Univ. of Va.,* 182 Mass. 156. But see *Iasigi* v. *Shaw,* 167 Mass 328. The fact that there was no provision made for disposal of the surplus does not make it a gift of the entire income. *In re Sanderson's Trust,* 3 K. & J. 497. But in view of the language used in the will in the instant case, there is at least some basis for the guardian's contention that the testatrix intended the whole income to go to the beneficiary. As to disposal of unexpended accumulations of income, the general rule is that "they follow the fate of the principal." *Hanson* v. *Graham, supra.* If the principal fund or whole income has vested, the accumulations go to the life beneficiary, and on his death to his executor or administrator. *Rhode Island Hospital Trust Co.* v. *Noyes, supra* (see for collection of authorities); *Bayard* v. *Atkins,* 10 Pa. St. 15. But in *In re Sanderson's Trust, supra,* where the gift of income was not vested, the court made a distinction between surplus of income arising from personal estate and that arising out of real estate, holding that the former went, on death of the life beneficiary, with the principal fund, and the latter to the testator's heir at law. This distinction does not appear to have been recognized in the instant case. Nor was it noticed in *Demeritt* v. *Young, 72* N. H. 202 (no authorities cited), where the direction was to pay as much as might be "actually necessary for comfort and support," the court holding that the unexpended accumulation of income went to the remainderman. On the rights of the life tenant and remainderman in dividends, see PERRY, TRUSTS, Secs. 544, 545.

TRUSTS—RESULTING TRUST IN MORTGAGE LIEN ON PAYMENT TO REDEEM FROM FORECLOSURE.—The mortgagees had been awarded a judgment of foreclosure and the land had been sold to satisfy the judgment. The mortgagor being unable to raise sufficient funds to redeem, the defendant furnished 19/28 of the necessary funds. The mortgagor redeemed. In an action by the mortgagor to quiet title, the defendant cross-complained for an undivided 19/28 interest in the land on the theory of a resulting trust arising from his contribution to the redemption money. *Held,* that no resulting trust arises, the doctrine not being applicable to the case at bar. *Cochran* v. *Cochran,* (Wash., 1921), 195 Pac. 224.

In so far as the court's decision rested upon the nature of the mortgage as being merely a lien, it would seem that no valid distinction can be taken between resulting trusts arising in lien or in title theory states. In *Tobin* v. *Tobin,* 139 Wis. 494, it was held in a lien theory state that where one uses